



# MONTANA LEGISLATIVE BRANCH

## Legislative Fiscal Division

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Legislative Fiscal Analyst  
CLAYTON SCHENCK

DATE: September 27, 2006

TO: Legislative Finance Committee

FROM: Pat Gervais, Senior Fiscal Analyst

RE: Bill draft, recommendation from Law and Justice Interim Committee

The Montana Public Defender Act, SB 146 of the 2005 Legislative session, provided for a new statewide system for the provision of public defender services. This new statewide system was funded with a general fund appropriation with the impact on the general fund partially offset by a reduction in the entitlement share payments made to counties under 15-1-121 MCA. Because there was concern and disagreement about the accuracy of the data collected and the amounts of the entitlement share reduction for some counties, SB 146 provided that an audit of public defender costs be completed in the six largest counties<sup>1</sup> and a bill draft be forwarded to the 2007 Legislature by the Law and Justice Interim Committee (LJIC) to amend the entitlement share adjustment made for these six counties. The legislation specified that the LJIC was to work in consultation with the Legislative Finance Committee (LFC) and other stakeholders to arrive at the amount of the adjustment.

Attached to this memo are two documents:

- o A summary of the options for the entitlement share adjustment considered by a LJIC subcommittee including the option recommended to and adopted by the LJIC
- o A copy of LC0359, the bill draft requested by the LJIC as required by the Montana Public Defender Act to change the entitlement share adjustment of the six counties whose costs were audited

These documents are presented to the LFC as the recommendation of the LJIC for LFC review.

It appears that there was a perception that the audit of the cost recorded by these six counties would lead to improved accuracy and consistency in the data used to determine the reduction in the entitlement share. However, inconsistency in data remained after completion of the audit.<sup>2</sup> After study and consideration of all available information, the subcommittee of the LJIC

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<sup>1</sup> Cascade, Gallatin, Lewis and Clark, Missoula, Flathead, and Yellowstone counties

<sup>2</sup> For example, there are differences between what and how counties recorded costs and whether or not costs for public defender services in courts of limited jurisdiction were recorded separately from costs for public defender services in district courts.

working on this issue recommended to the full committee and the LJIC as a whole adopted a recommendation that the adjustment to the entitlement share be based upon a calculation that combined FY 2004 audit information on unreimbursed public defender costs, a fee of \$2 times the county population, and the county's desired target amount to arrive at an entitlement share reduction. The county by county adjustments to the entitlement share reduction are illustrated by the strike and insertion of dollar amounts and can be seen beginning on the bottom of page 5 of the bill draft. This bill draft contains no changes to statute other than the adjustment to the entitlement share reduction for these six counties.

The LJIC reviewed this bill draft and received public comment at its last meeting on August 31. During the public testimony at that meeting related to this bill draft some stakeholders expressed dissatisfaction with the proposal and requested that the LJIC consider changes to the bill as drafted. After consideration of public testimony, the LJIC took action and adopted the bill draft that is attached to this memo.

Because the LJIC has completed its interim work and will not meet again, it will not be possible for the LJIC to take action on any comments or suggestions of the LFC. However, should the LFC wish, comments regarding the bill draft could be sent to members of the LJIC.

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